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28 **UNITED STATES BANKRUPTCY COURT**
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28 **CENTRAL DISTRICT OF CALIFORNIA**
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28 **LOS ANGELES DIVISION**

19 In re	Case No. 2:20-bk-21022-BR
20 GIRARDI KEESE,	Chapter 7
21 Debtor.	CHAPTER 7 TRUSTEE'S EVIDENTIARY 22 OBJECTIONS TO THE DECLARATION 23 OF EVAN C. BORGES AND EXHIBITS 1 24 AND 2 ATTACHED THERETO IN 25 SUPPORT OF MOTION FOR 26 RECONSIDERATION
27	Date: TBD
28	Time: TBD
	Ctrm.: TBD
	[Filed Concurrently with Opposition to Reconsideration Motion and Declarations of Ronald Richards, Erin Joyce and Bjorn Wallman]

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3 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**
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5 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of
6 Girardi Keesee, hereby submits the following objections to the Declaration of Evan C.
7 Borges ("Borges") and Exhibits 1 and 2 attached thereto in support of Motion for
8 Reconsideration [Docket No. 437] filed by Erika Girardi to reconsider the appointment
9 order of the Law Offices of Ronald Richards & Associates, A.P.C., as Special Litigation
10 Counsel. The Borges Declaration and Exhibits 1 and 2 attached thereto are
11 objectionable for several reasons, and should be disregarded in their entirety.

12 I. **INTRODUCTION**
13

14 Ms. Girardi has selectively compiled various unauthenticated tweets and internet
15 postings while attributing them to Mr. Richards in violation of the rules governing
16 evidence. For example, the Declaration of Evan Borges fails to lay the proper foundation
17 for any of the postings attached to Exhibit 1. There is no assertion that the declarant, Mr.
18 Borges, prepared the compilation himself. The declarant is not a Twitter user to the best
19 of counsel's knowledge or an expert on Twitter extractions. Whoever provided Ms.
20 Girardi's counsel with the misleading grouping of tweets selectively scoured a private
21 party's account and cherry-picked hearsay materials to try to falsely contend some ethical
22 rule was violated. Judging by the materials attached, different individuals attempted to
23 take different screen shots at different times and provided it to Ms. Girardi's counsel, thus
24 raising various evidentiary issues. Accordingly, Ms. Girardi's motion lacks any admissible
25 evidence. See *Wady v. Provident Life & Accident Ins. Co. of Am.*, 216 F.Supp.2d 1060,
26 1064 (C.D. Cal. 2002) (excluding documents where proponent of the evidence "has no
27 personal knowledge of who maintains the website, who authored the documents, or the
28 accuracy of their contents").

1 **II. LEGAL DISCUSSION**

2 **A. The Attached Materials Are Not Authenticated.**

3 Ms. Girardi's counsel, as the declarant, cannot authenticate the contents of
4 Exhibits 1 and 2 attached to his declaration because he has not shown any personal
5 knowledge as to who posted any of the tweets found in those exhibits. There is also no
6 assertion that Ms. Girardi's attorney has any knowledge as to how or when the tweets
7 and other posts were generated or compiled. There is no evidence that the compilations
8 are accurate or complete. There is also no suggestion that any of the postings belonged
9 to verified accounts. Ms. Girardi cannot cure these evidentiary gaps in her reply papers.
10 See *Zamani v. Carnes*, 491 F.3d 990, 997 ("district court need not consider arguments
11 raised for the first time in a reply brief").

12 Courts are very skeptical in general of Internet-based information. See, e.g.,
13 *United States v. Jackson*, 208 F.3d 633, 638 (7th Cir. 2000) (finding that evidence taken
14 from the Internet lacked authentication where the proponent was unable to show that the
15 information had been posted by the organizations to which she attributed it). Courts view
16 information obtained from the Internet as inherently untrustworthy. (*St. Clair v. Johnny's
17 Oyster & Shrimp, Inc.* 76 F.Supp.2d 773, 775 (S.D. Tex. 1999) ("Anyone can put anything
18 on the Internet"). Because "hackers can adulterate the content on any website from any
19 location at any time," *ibid.*, evidence procured from the Internet must be properly
20 authenticated. See *United States v. Vayner*, 769 F.3d 125, 131-132 (2nd Cir. 2014) (no
21 evidence provided that defendant himself created Russian Facebook-style web page or
22 was responsible for its contents); see also *United States v. Browne*, 834 F.3d 403, 405,
23 408-415 (3rd Cir. 2016) (Facebook "chatroom" postings were not business records of
24 regularly conducted activity). "The rationale for the authentication requirement is that the
25 evidence is viewed as irrelevant unless the proponent of the evidence can show that the
26 evidence is what its proponent claims." *United States v. Meienberg*, 263 F.3d 1177, 1181
27 (10th Cir. 2001) (analyzing admissibility of printouts of computerized records); see also
28

1 *United States v. Tank*, 200 F.3d 627, 630 (9th Cir. 2000) (analyzing admissibility of
2 exhibits reflecting chat room conversations).

3 The two exhibits attached to the declaration of Ms. Girardi's counsel are not
4 authenticated. "To satisfy the requirement of authenticating or identifying an item of
5 evidence, the proponent must produce evidence sufficient to support a finding that the
6 item is what the proponent claims it is." Fed. R. Evid. 901(a). Here, however, the moving
7 papers are devoid of any declaration by Twitter account holders attesting to the contents
8 of the attached tweets. There is also no declaration by Twitter's custodian of records. See
9 *Specht v. Google Inc.*, 747 F.3d 929, 933 (7th Cir. 2014) (screenshots from internet
10 archive must be authenticated by testimony of witness with personal knowledge of how
11 internet archive works).

12 Exhibit 1 represents a series of partially-omitted, half conversations that were
13 scoured and selectively cherry picked to paint a distorted and misleading picture to act as
14 an evidentiary backdrop to interfere with the Trustee's choice of counsel. As such, the
15 "compilation" presented by Ms. Girardi is incomplete, reflecting overwhelming hearsay
16 conversations. Motion 10:18 (confirming the compilation represents copies of "certain
17 posts" about Ms. Girardi, thus rendering it incomplete). In fact, most of the attachments
18 are from unverified accounts, making it impossible to verify the identity of the speakers.
19 Because such materials have not been authenticated, they should be excluded.

20 While the supporting declaration attached to the motion seeks to describe the
21 contents of Exhibit 1, it merely states as follows: "Attached hereto as Exhibit 1 is a
22 compilation of tweets from Ronald Richards regarding this proceeding and individuals
23 involved in this proceeding from his Twitter account dating back to June 2, 2021."
24 (Borges Decl., ¶ 2.) Ms. Girardi, however, failed to download the entire replies, responses
25 and strings of expandable conversations associated with the subject tweets. Supplying
26 incomplete statements to the Court to imply counsel mistreated Ms. Girardi is completely
27 improper, unfair, and unreliable.

28 **B. The attached materials are hearsay.**

1 The lack of authentication is exacerbated by the hearsay nature of the attached
2 posts. The statements attributed to those communicating with Mr. Richards constitute
3 classic forms of hearsay. See *Lemon v. Norfolk Southern Ry. Co.*, 958 F.3d 417, 420 (6th
4 Cir. 2020) (statements by unnamed speakers that turn on second-hand gossip are
5 inadmissible hearsay). This provides an independent ground for exclusion.

6 **C. Exhibits 1 and 2 are Incomplete.**

7 Most, if not all, of the materials presented in Exhibit 1 are generally referred to as
8 Tweets and Replies (TAR). This means only one person may have seen these
9 statements. Furthermore, if a party on the other end deletes their Tweet, which is very
10 common, portions of the other side of the conversation will be deleted. Moreover, if one
11 does not open up all the replies or expand the windows, many portions of a string of
12 conversations will not print. This inevitably yields an incomplete, misleading, and
13 inaccurate conversation. As a result, the attached TARs are unreliable pieces of
14 information. It would be impossible to retroactively figure out which part was deleted by
15 the other user or what part remained.

16 The following example illustrates how unfair and misleading the compilation is.
17 The exhibits presented by Ms. Girardi omit a post by Mr. Richards regarding Mr. Mastan:

18
19 Replying to @RonaldRichards
20 (Unknown poster) Not saying it applies here, but numerous cases
21 illustrate that it has become standard operating procedure for lawyers
22 to attempt/withdraw from cases after they commit error.

23
24 6:12 AM · Jun 16, 2021 · Twitter for Android 1 Like

25
26 Tweet your reply
27 Ronald Richards @RonaldRichards · Jun 16
28 Replying to @TruthLawyers

1 **Mastan is a good attorney. He didn't make any errors on this one.**

2

3 While omitting the preceding post, the motion erroneously claims that Mr. Richards
4 was hostile to Ms. Girardi's counsel. In reality, however, Mr. Richards – having settled
5 other cases with Mr. Mastan – has been complimentary about Mr. Mastan, as evidenced
6 by the underlined text in the preceding post. As another example, Mr. Mastan and Mr.
7 Richards consented to the appointment order, precluding any suggestion of hostility.
8 These omitted facts further illustrate that, in scouring the internet to make a false claim
9 about lack of civility, those in charge of compiling the tweets attached to Ms. Girardi's
10 motion intentionally omitted this tweet.

11 **SUMMARY**

12 For the foregoing reasons, the Trustee requests that the Court disregard the
13 Declaration of Evan Borges and Exhibits 1 and 2 in their entirety. The Borges
14 Declaration and the proffered evidence submitted with it are inadmissible under the
15 Federal Rules of Evidence, as set forth above and in the chart below.

<u>Obj. #</u>	<u>Statement:</u>	<u>Objection:</u>	<u>Ruling:</u>
<u>T1 (pg.: line)</u>			
#1. ¶2 22:9- 11	"Attached hereto as Exhibit 1 is a compilation of tweets from Ronald Richards regarding this proceeding and individuals involved in this proceeding from his Twitter account dating back to June 2, 2021."	Fed. R. Evid. 402, 701, 802 There is neither foundation nor personal knowledge for declarant's assertions. The statements and	[] sustained [] overruled

1		exhibit 1 are inadmissible hearsay.	
3	#2. ¶3 22:12-13	"As of today's date, Mr. Richards's profile on his Twitter account, @RonaldRichards, now states that he has over 16,000 followers."	Fed. R. Evid. 402, 701, 802 There is neither foundation nor personal knowledge for declarant's assertions. [] overruled
9	#3 ¶4 22:14-16	"Attached hereto as Exhibit 2 is a compilation of tweets from Scott Hanson regarding this proceeding and individuals involved in this proceeding from his Twitter account dating back to June 13, 2021."	Fed. R. Evid. 402, 701, 802 There is nothing to lay the foundation for these out of court statements. There is no evidentiary support and declarant cannot testify as to what a third party said out of court. This is inadmissible hearsay. [] overruled
20	#4 ¶5 22:17-20	"The YouTube Interview referenced in the tweet from Mr. Richards dated June 16, 2021, which is cited in the motion accompanying this Declaration, appeared on a YouTube channel called "Up and Adam!" with a URL link that can be accessed at:	Fed. R. Evid. 402, 701, 802 There is nothing to lay the foundation for these out of court statements. There is no evidentiary support and declarant cannot testify as to

	<p>https://www.youtube.com/watch?v=SIFk3-hoVU8.</p>	<p>what a third party said out of court. This is inadmissible hearsay.</p>	
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CONCLUSION

11 The materials challenged in these objections should be deemed inadmissible and
12 disregarded by the Court.

13 | Dated: July 16, 2021

Respectfully submitted,

LAW OFFICES OF RONALD RICHARDS & ASSOCIATES, APC

**WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP**

By: /s/ Ronald Richards
Ronald Richards
Robert Cooper

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
PO Box 11480
Beverly Hills, CA 90213

A true and correct copy of the foregoing document entitled (*specify*): _____
Objection and Response to Motion for Reconsideration

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) July 16, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) June 23, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 7, 2021 Ronald Richards /s Ronald Richards
Date Printed Name Signature

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